FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.
CRIMINAL APPLICATION NO. 1504 OF 2005.
IN
CRIMINAL APPEAL NO. 231 OF 2005.

Ajay Eknath Tribhuvan & anr. ..Applicants.
vs.
The State of Maharashtra. ..Respondents.
& anr.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders.	:	Court's or Judge's orders

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Shri H.K. Prem and Ms. Prinkaya Vegas for the applicants.

Shri D.P.Adsule, A.P.P. for the State.

CORAM: V.M.KANADE,J.
DATED: 11-3-2005.

P.C.:

1. Heard learned Counsel appearing for the applicants and the learned A.P.P. for the State.

2. The applicants are convicted by the trial Court for having committed an offence punishable under section 376(2)(g) of the Indian Penal Code and sentenced to suffer R.I. for 10 years. The prosecution case is that the accused came to the residence of the prosecutrix at 2 a.m. in the morning and knocked the door and when door was opened by her brother, the applicants took the prosecutrix in the compound of the building and committed

rape on her.

3. Learned Counsel for the applicants submitted that though the prosecutrix had given names of the accused in the F.I.R., in her cross-examination she has stated that she did not know the names of the accused at the time when offence was committed. Further there is discrepancy in the statement and the statement of the doctor, who examined her. In her statement she has stated that she did not take bath after the incident. However, the doctor in his evidence has stated that since the prosecutrix had taken bath, semen was not found on her person. The medical evidence also shows that there was no injury on her private part. Learned Counsel for the applicants submits that there was delay of almost 8 hours in lodging the F.I.R.

4. Learned A.P.P. appearing for the State has vehemently opposed the submissions made by the learned Counsel for the applicants. He submitted that the prosecutrix has given details as to how applicants committed rape on her. He therefore, submitted that application for bail may be rejected.

5. In the present case, incident in question has taken place in March 1991. During trial, applicant was on bail. There is discrepancy in the statement made by the prosecutrix in her examination-in-chief and in the F.I.R. which was recorded by the police. The conduct of the prosecutrix also appears to be unnatural, as immediately after rape was committed, before going to the hospital, she had contacted her friend Raju and, thereafter, she went to the hospital. There was no occasion for the prosecutrix for meeting her friend and the natural conduct of a person who is raped would be that she would go to police station or to the hospital. No injuries are found on the person of the prosecutrix. Though she stated in the cross-examination that she never had prior intercourse before the incident, the doctor who examined her, has stated that she had informed him that she had sexual intercourse with her fiance on 3/4 occasions. In view of the inconsistency in the statement of the prosecutrix and also the fact that applicants were on bail during trial, the applicants are entitled to be released on bail.

6. Applicants be released on bail in the sum of Rs. 5,000/- each, with one or two sureties in the like amount. Applicants shall, however, report to concerned police station once in three months.